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No. 93-1425

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

KEITH MILTON RHINEHART, a single person; THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation; KATHI BAILEY, a married person; LILLIAN YOUNG, a married person; TONI STRAUCH, a married person; and ILSE TAYLOR, representing women who were members of the Aquarian Foundation on or after March 17, 1978,

Petitioners,

v.

THE SEATTLE TIMES, a Delaware corporation, d/b/a The Seattle Times; WALLA UNION-BULLETIN, INC.; ERIK LACITIS and JANE DOE LACITIS; JOHN WILSON and REBECCA KAREN WILSON; JOHN McCOY and KAREN McCOY,

Respondents.

On Petition for Writ of Certiorari to the Court of Appeals, Division I, of the State of Washington

BRIEF IN OPPOSITION

BRUCE E. H. JOHNSON *
HOWARD STAMBOR
DAVIS WRIGHT TREMAINE
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101
(206) 622-3150
Counsel for Respondents
* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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On Petition for Writ of Certiorari to the Court of Appeals, Division I, of the State of Washington

BRIEF IN OPPOSITION

Respondents [1] ask that the Court deny the writ of certiorari petitioners have requested.

[1] Respondent Walla Union-Bulletin, Inc., is a wholly-owned subsidiary of respondent Seattle Times Company. Blethen Corporation, a privately-held corporation, owns 50.5% and Knight-Ridder Investment Co., a company that is affiliated with Knight-Ridder, Inc., a publicly-held corporation, owns 49.5% of the common voting stock of Seattle Times Company.

COUNTER-STATEMENT OF THE CASE

A decade ago this fourteen-year-old lawsuit was the subject of this Court's decision in *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984). This lawsuit has also been the basis for unsuccessful petitions for certiorari by these same petitioners in 1984 and 1989, who have brought three separate defamation cases against respondents since 1980.[2] In addition to this case, petitioners have filed and maintained many other frivolous lawsuits and appeals against media defendants and others in the federal and state courts of the State of Washington[3] and

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[2] The current Petition for Certiorari ("Pet.") concerns the first lawsuit (hereafter "*Rhinehart I*"). *Rhinehart I* was the subject of the 1984 opinion by this Court, which affirmed the decision by the Washington Supreme Court in *Rhinehart v. Seattle Times Co.*, 98 Wash. 2d 22, 654 P.2d 673, 690-91 (1982), *aff'd*, 467 U.S. 20 (1984), and of the two unsuccessful petitions for certiorari that have been filed at five-year intervals by these same petitioners. *See, e.g., Rhinehart v. Seattle Times Co.*, 467 U.S. 1230 (1984); *Rhinehart v. Seattle Times Co.*, 490 U.S. 1015 (1989). The second and third lawsuits (hereafter "*Rhinehart II*" and "*Rhinehart III*", respectively) were commenced in 1982 and 1986, respectively, and were later consolidated by the trial court.

[3] In addition to this case (*Rhinehart I*) petitioners have filed a series of frivolous lawsuits and frivolous appeals in the federal and state courts of Washington.

First, petitioners brought claims in the United States Bankruptcy Court in Seattle against a former Aquarian Foundation member who (as another bankruptcy court observed) had left the fold when he "found questionable the Foundation's practice of passing off cheap jewelry as 'sacred' gems in return for donations ranging anywhere from $25.00 to $1,000.00." *In re Thomas*, 54 B.R. 287, 290 (Bankr. D. Hawaii 1985). The United States Bankruptcy Court in Seattle dismissed those claims because of petitioners' "flagrant and intentional violation of the rules of discovery" and held that petitioners' misconduct, which included Rhinehart's appearance at his deposition dressed in a gorilla costume, was designed to make a "mockery of the Court and of the judicial process." Rejecting petitioners' constitutional attacks, the United States District Court affirmed the decision and the Ninth Circuit dismissed petitioners' appeal. *Herr v. Aquarian Founda-*

tion, Inc., Adv. No. 80-1871 (Bankr. W.D. Wash. Feb. 28, 1984), *aff'd*, No. C84-496V (W.D. Wash. Sept. 7, 1984), *app. dismissed*, No. 84-4369 (9th Cir. Oct. 11, 1985).

Second, petitioners next defied discovery orders in a libel lawsuit that they had filed against a Seattle television station (KIRO), the Tacoma News-Tribune, and others. Petitioners argued their lawsuits were exempt from the normal rules of civil discovery and forced the trial court to dismiss their claims. They appealed and lost in the Washington Court of Appeals (which ruled the arguments "specious" and "without merit"). The Washington Supreme Court and this Court refused review. *Rhinehart v. KIRO, Inc.*, 44 Wash. App. 707, 723 P.2d 22 (1986), *rev. denied*, 108 Wash. 2d 1008, *app. dismissed sub nom., Rhinehart v. Tribune Pub. Co.*, 484 U.S. 805 (1987). In an unpublished decision in a related case, the Washington Court of Appeals affirmed the dismissal of a similar set of claims brought by Rhinehart. *Rhinehart v. Powers*, 45 Wash. App. 1005 (1986).

Third and fourth, between 1985 and 1989, petitioners also resisted discovery orders in a collection action filed by their former attorneys in *Rhinehart I*. Their defiance resulted in a default judgment and an award of sanctions issued by the Washington Court of Appeals and upheld by the Washington Supreme Court and this Court on further review. *Edwards & Barbieri v. Aquarian Foundation*, No. 17405-3-I (Wash. App. Aug. 28, 1986), *rev. denied*, 107 Wash. 2d 1027, *app. dismissed*, 484 U.S. 892 (1987), *reh. denied*, 484 U.S. 1083 (1988). Two years later, in supplemental proceedings, petitioners again refused to comply with discovery, again sustained sanctions, again sought further appellate review, and again lost, with the Washington Court of Appeals imposing sanctions as a consequence of petitioners' frivolous appeal and the Washington Supreme Court and this Court refusing further review. *Aquarian Foundation v. Edwards & Barbieri*, No. 20268-5-I (Wash. App. Nov. 21, 1988), *rev. denied*, 112 Wash. 2d 1003, *cert. denied*, 493 U.S. 813 (1989).

Fifth, petitioners filed a second defamation suit against KIRO and again refused to comply with discovery, which again forced the trial court to dismiss their claims because of their deliberate noncompliance with discovery orders. This decision was again affirmed by the Washington Court of Appeals, which imposed a sanctions award, and was sustained on further appellate review. This Court denied certiorari in 1990. *Rhinehart v. KIRO, Inc.*, No. 22546-4-I (Wash. App. Aug. 8, 1989), *rev. denied*, 113 Wash. 2d 1035, 785 P.2d 825, *cert. denied*, 498 U.S. 850 (1990).

Sixth and Seventh, petitioners commenced two new defamation lawsuits in King County Superior Court against respondents. The

elsewhere.[4] They now complain that the Washington

first (*Rhinehart II*) alleged that the newspaper had defamed petitioners when it published an article about the former Foundation member who was the subject of the Foundation's unsuccessful Bankruptcy Court action that was dismissed after Rhinehart appeared at his deposition dressed in a gorilla costume. The other action (*Rhinehart III*) involved claims of defamation brought by Rhinehart, the Foundation, and Linda Dunn (a Foundation officer) because the newspaper had reported on and quoted from this Court's May 1984 decision upholding the protective order issued in *Rhinehart I*. The trial court dismissed the claims and awarded sanctions in *Rhinehart II* after petitioners repeatedly defied discovery orders. *Rhinehart v Seattle Times*, 15 Med. L. Rep. (BNA) 1510 (Wash. Super. Ct. May 13, 1988). The trial court ruled that the claims in *Rhinehart III* were frivolous and were brought in violation of RCW 4.84.185 (a statute designed to deter frivolous litigation) and Washington Civil Rule 11 and awarded respondents approximately $42,000 in sanctions. *Rhinehart v. Seattle Times*, 15 Med. L. Rep. (BNA) 1509 (Wash. Super. Ct. May 11, 1988). The Washington Court of Appeals affirmed these rulings. *Rhinehart v. Seattle Times, Inc.*, 59 Wash. App. 332, 798 P.2d 1155 (1990) (published ruling); *Rhinehart v. Seattle Times*, 69 Wash. App. 1067 (1993) (unpublished decision).

Eighth, petitioners filed a civil rights action in United States District Court in Seattle against the State of Washington, that enforcement of the Civil Rules violated their claimed constitutional right to pursue frivolous litigation. Because the claims against the State were absolutely barred by the Eleventh Amendment, Chief Judge Barbara J. Rothstein dismissed their action with prejudice, ruled that the claims were frivolous, and imposed sanctions. On February 15, 1994, the United States Court of Appeals for the Ninth Circuit agreed and affirmed her rulings in their entirety. The Ninth Circuit also imposed $1,000 in additional sanctions because the appeal was frivolous, ruling that petitioners had "failed to cite any authority to support the result sought in this case" and rejecting their argument that the Eleventh Amendment immunity issue was "in any way unsettled," given that it "has been consistently rejected for over a hundred years." As the court noted: "we and the Supreme Court have consistently rejected each of Appellants' arguments." *Aquarian Foundation v. Washington State*, 1991 U.S. Dist. LEXIS 16569 (W.D. Wash. Aug. 21, 1991), and 1991 U.S. Dist. LEXIS 16571 (W.D. Wash. Oct. 17, 1991), *aff'd*, 1994 U.S. App. LEXIS 3228 (9th Cir. Feb. 15, 1994).

[4] *See, e.g., Rhinehart v. Stauffer*, 638 F.2d 1169 (9th Cir. 1979) (granting sanctions under Fed. R. Civ. P. 11).

Court of Appeals has ordered them to reimburse respondents for the expenses, including attorneys' fees, that respondents incurred in responding to one of their frivolous appeals.

The facts underlying the Petition are quite simple.[5] Petitioners defied the trial court's discovery orders.[6] The trial court then dismissed their complaint. Petitioners appealed. The Washington Court of Appeals affirmed and remanded for the trial court to calculate the attorneys' fees that petitioners should pay respondents for petitioners' frivolous appeal. Pet. Appendix ("App.") B26. On

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[5] Respondents contest many of the assertions made in petitioners' Statement of the Case. *See* Pet. at 3-6. Among other things, petitioners' assertions that there were "defamatory, untrue articles," that respondents had depicted petitioners "as a bizarre, mind-controlling cult that bilked its members out of personal funds and property," that Aquarian Foundation members "experienced ostracism and violence as a result of the defamatory articles published by Respondents," that "[t]hese acts of violence were documented in the original action," that "[r]espondents had already substantially completed the legal work to respond to the appeal," that Judge Dore did not "allow[] a record to be made," that petitioners' counsel "did not refuse to cross-examine counsel," that "the Court did not provide for the calling of any factual witnesses," and that Judge Dore "again summarily awarded the same unconscionable amount of attorney's fees by simply signing findings submitted by Respondents" are either contrary to or unsupported by the record in this case.

[6] In January 1987, after *Rhinehart I* had been initially remanded to the trial court in Seattle, King County Superior Court Judge James J. Dore dismissed petitioners' claims when they deliberately defied his discovery orders and presented the same recalcitrant arguments that had been rejected in all their prior cases and appeals. In 1988 the Washington Court of Appeals affirmed that dismissal, held that petitioners' appeal was frivolous and that "the issues are devoid of merit with no reasonable possibility of reversal," and ordered the case again remanded to the Superior Court to determine the amount of the sanctions to be imposed upon petitioners. The Washington Supreme Court then denied review, and this Court dismissed the consequent appeal. *Rhinehart v. Seattle Times Co.*, 51 Wash. App. 561, 581-82, 754 P.2d 1243, *rev. denied*, 111 Wash. 2d 1025 (1988), *app. dismissed*, 490 U.S. 1015, *reh. denied*, 490 U.S. 1102 (1989).

December 16, 1988, respondents submitted two affidavits in support of their fee application. The first described the contorted and bizarre history of the appeal. The second, which included detailed timesheets, itemized the fees and expenses respondents had incurred. CP 30-113.[7] On January 5, 1989, petitioners opposed the fee request and offered a barrage of arguments in opposition.[8] CP 118-39, 160-61.

On January 9, 1989, the parties appeared again before Judge Dore of the King County Superior Court. Respondents' counsel, Howard Stambor, argued in support of the fee application. Jean Schiedler-Brown, petitioners' lawyer, argued in opposition.[9] Petitioners sought to delay the proceedings by repeatedly demanding additional discovery of respondents' attorneys and by demanding that a jury determine the amount of the sanctions award.

Judge Dore ruled that there was "no basis" for petitioners' various demands and denied them. CP 162-63, 164; RP 4, 22-23. He also granted respondents' fee application, as documented by their affidavits and time rec-

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[7] References to the Clerk's Papers included in the Washington Court of Appeals record are designated as "CP," references to the Report of Proceedings are designated as "RP," and references to the Supplemental Clerk's Papers generated after the 1990 reference by the Washington Court of Appeals are designated as "SCP."

[8] First, arguing that the fee hearing was "a new action," petitioners suddenly demanded that the trial judge be disqualified from hearing the motion. CP 118-20. Second, petitioners argued they were entitled to a jury trial on the request for fees. CP 114-28. Third, petitioners moved for a continuance to enable them to obtain unspecified discovery "that will provide greater detail on the correlation between the time billed and the time actually spent performing necessary legal tasks." CP 128-31, 137-39, 161. Fourth, they challenged some of the requested fees. CP 131-34.

[9] At the outset of the hearing, Ms. Schiedler-Brown demanded a "chance to cross-examine counsel or do further discovery." At the same time, however, she rejected the invitation to cross-examine respondents' attorneys. RP 8-9, 18.

ords, and awarded them a judgment in the amount of $64,752.02. CP 158-59, 164; RP 22-23.

Petitioners again appealed Judge Dore's decision. On August 13, 1990, the Washington Court of Appeals affirmed all of Judge Dore's rulings except for his determination of the amount of attorneys' fees. Pet. App. A1-A8. Although it retained jurisdiction, the Court of Appeals referred the case back to Judge Dore to supplement the record with more specific findings regarding the basis for the fee award. The Court of Appeals specified that these findings "shall be made from the record as presently constituted, unless the trial judge determines that additional evidence is necessary in order to comply with the principles set forth in this opinion." Pet. App. A7-A8.

On September 10, 1990, Judge Dore held a hearing in which he entered additional findings in support of his 1989 fee award. Prior to that hearing, and in disregard of the instructions of the Washington Court of Appeals, petitioners again sought to burden respondents' attorneys with discovery demands—to which respondents again objected. SCP 1-20, 32-34. Judge Dore thereupon issued findings that described the basis and supported the propriety of the fee award. SCP 21-31.

Petitioners again appealed. The Washington Court of Appeals again affirmed. Pet. App. A10-A11. The court also again denied petitioners' motion for reconsideration. Pet. App. A12. On December 1, 1993, the Washington Supreme Court denied review. Pet. App. A13.

ARGUMENT

This Petition for Certiorari seeks to raise a constitutional challenge to an award of reasonable attorneys' fees prompted by one of petitioners' many frivolous lawsuits and appeals during the past fourteen years. Petitioners do not, however, present any arguments that satisfy the standards of Supreme Court Rule 10.1(b) and (c).

I. PETITIONERS DO NOT POINT TO ANY CONFLICTING DECISIONS BY ANY STATE COURT OF LAST RESORT, BY ANY UNITED STATES COURT OF APPEALS, OR BY THIS COURT.

Despite the requirements imposed by Supreme Court Rules, petitioners do not cite any case from any state court of last resort or from any of the United States Courts of Appeals that decides the federal questions presented in the Petition and conflicts with the Washington Court of Appeals opinion that they seek to challenge here. Nor do petitioners contend that the decision of the Washington Court of Appeals conflicts with any decision of this Court. They assert, rather, that their case presents "a genuine issue of first impression that requires guidance" from this Court. Pet. at 11. Given this record, this is insufficient to satisfy the requirements of Supreme Court Rule 10.1(b) and (c).

II. PETITIONERS DO NOT PRESENT ANY IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE SETTLED BY THIS COURT.

Petitioners seek to raise two federal constitutional arguments. Both are wholly without substance. Neither warrants a grant of certiorari by this Court.

A. Petitioners' Argument That a State's Denial of a Jury Trial for a Sanctions Award Violates the Fourteenth Amendment Is Wholly Without Substance.

Petitioners first argue that the Washington Court of Appeals violated their rights under the Equal Protection

Clause of the Fourteenth Amendment[10] when it determined that there was no right to have a jury determine the amount of a fee award made under Washington Rules of Appellate Procedure ("RAP") 18.7 and 18.9(a) and characterized petitioners' position as "frivolous." Pet. at 9-11; Pet. App. A4-A5. Washington courts, like other American jurisdictions, have long recognized that the power to award fees—particularly fees incurred in responding to a frivolous appeal—is of equitable, not legal, origin.[11]

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[10] The Seventh Amendment's requirement of trial by jury in certain common law civil actions has never been applied by this Court to the States. Petitioners therefore ground their argument in the Fourteenth Amendment, ignoring this Court's ruling that the Fourteenth Amendment "neither implies that all trials must be by jury nor guarantees any particular form or method of state procedure." *Hardware Dealers' Mutual Fire Ins. Co. v. Glidden Co.*, 284 U.S. 151, 158 (1931). Indeed, petitioners' theory that the Equal Protection Clause forbids the states from recognizing the historic distinctions between law and equity would go far beyond the requirements of the Seventh Amendment.

[11] This rule is well-established in Washington. "There is no common-law principle that permits a successful litigant to recover from his losing adversary the costs and expenses of the litigation. . . ." *Perlus v. Silver*, 71 Wash. 338, 341, 128 P. 661, 663 (1912). " 'The right to recover attorneys' fees from one's opponent in litigation as part of the costs thereof does not exist at common law.' " *State ex rel. Macri v. City of Bremerton*, 8 Wash. 2d 93, 113, 111 P.2d 612, 917 (1941), *quoting* 14 Am. Jur. "Costs" § 63 at 38 (1938). Thus, fee awards are judicial, not jury, determinations. *See Safeco Ins. Co. of America v. JMG Restaurants, Inc.*, 37 Wash. App. 1, 680 P.2d 409 (1984); RCW 4.84.020 (statute providing that "in all cases . . . in which attorneys' fees are allowed, the amount thereof shall be fixed by the court at such sum as the court shall deem reasonable"). Petitioners contention that recovering attorneys' fees on appeal is, in essence, an action on a debt or some form of common law cause of action also has no basis and is contrary to Washington law. *Weiss v. Bruno*, 83 Wash. 2d 911, 914, 523 P.2d 915, 917 (1974) ("the right to award attorneys' fees in limited special situations springs from [the courts'] inherent equitable powers [and the courts] are at liberty to set the boundaries of that power"); *Puget Sound Plywood, Inc. v. Mester*, 86 Wash. 2d

In support of their argument that this Court should grant their Petition, petitioners contend that the traditional concept of "equity" [12] as adopted by the Washington courts (and presumably as recognized by the courts of other states and of the United States) is a "mere fiction" and is "archaic" [13] and should therefore be eliminated by the United States Supreme Court. They assert that Washington State's recognition of the historic distinctions between equity suits and actions at law (a distinction that is also embodied in the Seventh Amendment as applied by the decisions of this Court)[14] is "irrational" and therefore gives rise to a Fourteenth Amendment violation.[15] Pet. at 9, 11.

Even assuming that petitioners had made their Equal Protection argument to the Washington Court of Ap-

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135, 144, 542 P.2d 756, 762 (1975) (an appellate court has "inherent jurisdiction to fix the amount of attorney fees").

[12] A party has a right to a jury trial under Article I, Section 21, of the Washington Constitution only when a legal cause of action is alleged. *Allard v. Pacific National Bank*, 99 Wash. 2d 394, 399, 663 P.2d 104, 108 (1983).

[13] In enforcing its constitutional guaranty to a jury, Washington State applies an "historical standard"—that is, it looks to whether a jury right was afforded in connection with a particular action at the time the Washington State Constitution was adopted in 1889. *Sofie v. Fibreboard Corp.*, 112 Wash. 2d 636, 644-45, 771 P.2d 711, 716, 780 P.2d 260 (1989).

[14] This Court follows the same principle that petitioners challenge here. It has recognized and relied on this allegedly "irrational" and "archaic" distinction in applying the Seventh Amendment jury right to proceedings in federal courts. *See, e.g., Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 40-47 (1989).

[15] Presumably, this alleged "irrationality" arises from petitioners' inability to perceive the distinction between a collection action filed by an attorney, in which the plaintiff or defendant could demand that a jury determine the amount of the debt (*i.e.*, the amount the client owes the attorney), and a frivolous appeal, where a sanctions award encompasses attorneys' fees. Pet. at 9-11.

peals in a timely manner,[16] the argument is bizarre and without substance. This Court has never held that the Fourteenth Amendment erases the fundamental and historic distinctions between law and equity. Indeed, the Court has itself awarded fees in exercising its inherent powers under Supreme Court Rule 42.2 (and its predecessors) without permitting trial by jury.[17] Other federal and state courts have adopted the same principle in issuing sanctions awards.[18] Given these well-established principles, there is nothing in petitioners' argument about any Equal Protection right to a jury trial that requires any intervention by this Court.

Indeed, there is absolutely nothing "irrational" about abiding by the original intent of a state's constitution makers, who understood and recognized the basic distinctions between law and equity. Thus, the trial court's decision rejecting petitioners' demand for a jury trial does not raise any substantial federal question for this Court's consideration.

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[16] Under applicable Washington law, an argument in an appeal brief that is unsupported by authority need not be considered by the Court of Appeals. Petitioners failed to comply with that basic procedural requirement. Pet. App. A5.

[17] *See, e.g., In re McDonald*, 489 U.S. 180 (1989) (per curiam); *Tatum v. Regents of the University of Nebraska-Lincoln*, 462 U.S. 1117 (1983).

[18] *See, e.g., Eisenberg v. University of New Mexico*, 936 F.2d 1131, 1137 (10th Cir. 1991); *Donaldson v. Clark*, 819 F.2d 1551, 1558 (11th Cir. 1987) (rejecting jury right in application for sanctions under Fed. R. Civ. P. 11); *Watson v. Maier*, 64 Wash. App. 889, 899-90, 827 P.2d 311, 317 ("[t]here is also no entitlement to a jury trial on CR 11 allegations of attorney misconduct, even though a factual determination is involved"), *rev. denied*, 120 Wash. 2d 1015, 844 P.2d 436 (1992).

B. There Is No Basis for Petitioners' Argument That Judge Dore Violated Due Process or Equal Protection When He Denied Unnecessary Discovery.

Petitioners' second federal claim is that the Fourteenth Amendment entitled them to additional discovery relating to the fee award respondents had requested. They assert that Judge Dore's denial of this demand for discovery violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Pet. at 12-17. What petitioners fail to note, however, is that when they requested the discovery in January 1989, respondents' attorneys had already produced their time records *and*, at the hearing, offered to be examined under oath regarding the fee request.[19] Petitioners, however, refused the offer.

Given these circumstances, discovery would have been productive of nothing but additional delay and additional harassment.[20] As the Washington Court of Appeals stated: "Allowing discovery would have only served to further delay the proceeding." Pet. App. A4. Petitioners had everything they needed to challenge the fee request.[21]

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[19] As the Washington Court of Appeals noted: "Respondents' counsel presented detailed time sheets and was available to appellants for questioning under oath." Pet. App. A4. In the Appendix to their Petition, petitioners included certain portions of the verbatim report of proceedings (Petition App. D9-D15) from that hearing but omit those portions that show that respondents' attorneys offered to be cross-examined and that petitioners' lawyer refused the invitation.

[20] Petitioners' continuing effort to prolong this dispute and resist respondents' right to fees with two separate appeals since the Washington Court of Appeals issued its sanctions award in 1988—almost six years ago—is in defiance of this Court's warning that "[a] request for attorneys' fees should not result in a second major litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

[21] Indeed, due process in these circumstances required only notice and a hearing. *See, e.g., Donaldson v. Clark*, 819 F.2d at 1558-61; *Watson v. Maier*, 64 Wash. App. at 900, 927 P.2d 316-17 (affirming denial of discovery in connection with sanctions award and holding that "due process . . . does not necessarily mean that an attorney

Judge Dore's decision to deny petitioners' demand for additional, and apparently unnecessary, discovery is not a matter requiring intervention by this Court. As this Court noted a decade ago in this very case, "[t]he trial court is in the best position to weigh fairly the competing needs and interests of parties affected by discovery." *Seattle Times Co. v. Rhinehart*, 467 U.S. at 36. Here, the Washintgon trial court has ruled and the Washington Court of Appeals has affirmed that the decision to deny unnecessary discovery was not an abuse of discretion. Pet. App. A4. When it rejected an earlier constitutional challenge relating to the scope of discovery in this case, this Court stated that "[i]t is sufficient . . . that the highest court in the State found no abuse of discretion in the trial court's decision. . . ." *Seattle Times Co. v. Rhinehart*, 467 U.S. at 37.

Certainly, there was no abuse of discretion here. The trial court's decision about the scope of discovery for a sanctions award does not raise any substantial federal question for this Court's consideration.

CONCLUSION

For the reasons stated above, the Court should deny the Petition for Certiorari.

Respectfully submitted,

BRUCE E. H. JOHNSON *
HOWARD STAMBOR
DAVIS WRIGHT TREMAINE
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101
(206) 622-3150
Counsel for Respondents

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* Counsel of Record

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is entitled to a full evidentiary hearing on CR 11 sanctions . . . the court should limit the scope of sanctions proceedings to the record").